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Attorneys for Plaintiff Emelia M. Pasternak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK,)	Case No.
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	(Fair Credit Reporting Act
TRANS UNION, LLC, EXPERIAN)	15 USC § 1681 <i>et seq.</i>)
INFORMATION SOLUTIONS, INC., EQUIFAX)	
INFORMATION SERVICES, LLC, and CAPITAL)	DEMAND FOR JURY TRIAL
ONE BANK, a national association,)	
)	
Defendants.)	

Jurisdiction and Venue

1. This action is brought pursuant to the Fair Credit Reporting Act, 15 USC §1681 *et seq.* (FCRA). The court has jurisdiction pursuant to 15 USC §1681p. Plaintiff lives in this district and the events complained of occurred here.

Description of the Case

2. The first claim arises out of the consumer reporting agency ("CRA") defendants' failure to maintain reasonable procedures to limit the furnishing of a consumer's credit report to persons who have a permissible purpose to view that consumer's credit report.

Pasternak v. Trans Union, et al.
Complaint and Jury Demand

1 The CRA defendants failed to maintain such procedures and gave plaintiff's credit report to
2 subscribers who did not have a permissible purpose to see plaintiff's credit file. As a result of
3 these violations of the FCRA, the CRA defendants enabled an imposter to open credit
4 accounts in plaintiff's name and to incur large charges on those accounts. As a result, plaintiff
5 suffered damages and continues to be suffer damages.
6

7 3. The second claim involves the CRA defendants' failures to conduct a
8 reasonable reinvestigation of information after receiving notice from plaintiff that she
9 disputed that information and their failures to comply with other aspects of 15 USC § 1681i.

10 4. The third claim arises out of Capital One's failure to fulfill its obligations
11 under 15 USC § 1681s-2(b) relating to the reinvestigation it was required to do after it was
12 notified by the CRA defendants that plaintiff disputed information that Capital One was
13 reporting to them.
14

15 **The Parties**

16 5. Plaintiff Emelia M. Pasternak ("plaintiff") is a consumer as defined by the
17 FCRA, 15 USC §1681a(c), and a resident of San Francisco, California.

18 6. Defendant Trans Union LLC ("Trans Union") is an Illinois corporation with its
19 principal place of business in Chicago, Illinois. Trans Union is a "consumer reporting agency"
20 as defined by the FCRA, 15 USC § 1681a(f).
21

22 7. Defendant Experian Information Solutions, Inc. ("Experian") is an Ohio
23 corporation with its principal place of business in Costa Mesa, California. Experian is a
24 "consumer reporting agency" as defined by the FCRA, 15 USC § 1681a(f).
25
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1 8. Defendant Equifax Information Services LLC (“Equifax”) is a Georgia
2 corporation with its principal place of business in Atlanta, Georgia. Equifax is a “consumer
3 reporting agency” as defined by the FCRA, 15 USC § 1681a(f).

4 9. Trans Union, Equifax and Experian are sometimes referred to collectively as
5 the CRA defendants.

6 10. Defendant Capital One Bank (“Capital One”) is a national banking association.
7 Capital One is a furnisher of information to one or more of the other defendants.

8
9 **First Claim: The CRA Defendants’ Violations of 15 USC § 1681b(a)**

10 11. Plaintiff incorporates by reference paragraphs 1 through 10.

11 12. The FCRA provides that a CRA may furnish a consumer’s report to “a person
12 which it has reason to believe intends to use the information in connection with a credit
13 transaction involving the consumer on whom the information is to be furnished and involving
14 the extension of credit to, or review or collection of an account of the consumer....” 15 USC §
15 1681b(a). The Act further provides that every consumer reporting agency “shall maintain
16 reasonable procedures designed...to limit the furnishing of consumer reports to the purposes
17 listed under section 1681b” of the Act.

18 13. Within the past five years an unknown person used plaintiff’s name and some
19 of her personal identification information to apply for credit with various companies that
20 subscribe to defendants’ credit reporting services.

21 14. The person who used plaintiff’s name and personal identification information
22 to apply for credit did so without plaintiff’s knowledge, consent or authorization. Hereinafter
23 that person is referred to as “the imposter.”
24
25
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1 15. Plaintiff is informed and believes that the imposter's credit applications
2 contained some information that matched plaintiff's identifying information, but that those
3 credit applications did not match all of plaintiff's information as contained in defendants' files
4 on plaintiff.

5 16. The CRA defendants, and each of them, responded to their subscribers'
6 inquiries by treating the imposter's applications as made by plaintiff, even though some
7 critical identification information was missing or did not match the information on file for
8 plaintiff.

9 17. When the CRA defendants furnished plaintiff's credit report to their
10 subscribers, those defendants did not maintain reasonable procedures designed to limit the
11 furnishing of consumer reports to the purposes listed under 15 USC § 1681b.
12

13 18. Plaintiff did not become aware of any of these violations of the FCRA until
14 late 2005.
15

16 19. Each of the CRA defendants negligently and/or willfully failed to comply with
17 the requirements of 15 USC §1681e(b) by failing to maintain reasonable procedures to limit
18 the furnishing of credit reports to persons who have a permissible purpose to obtain such
19 reports.
20

21 20. Each of the CRA defendants negligently and/or willfully violated the
22 requirements of 15 USC 1681b by furnishing plaintiff's credit report to persons who did not
23 have a permissible purpose to access plaintiff's credit report.

24 21. As a result of the CRA defendants' violations of the FCRA, plaintiff has
25 suffered actual damages. Plaintiff continues to suffer actual damages and plaintiff will suffer
26

1 more damages in the future. Plaintiff seeks damages in an amount to be determined by the
2 jury.

3 22. Plaintiff requests punitive damages pursuant to 15 USC § 1681n(a)(2) against
4 each of the CRA defendants.

5 23. Plaintiff requests costs of the action together with reasonable attorney fees as
6 determined by the court in accordance with 15 USC §§ 1681n(a) and 1681o(a).
7

8 **Second Claim: The CRA Defendants' Violations of 15 USC § 1681i**

9 24. Plaintiff incorporates by reference paragraphs 1 through 10.

10 25. The FCRA provides that if the completeness or accuracy of any item of
11 information contained in a consumer's file at a consumer reporting agency is disputed by the
12 consumer and the consumer notifies the agency directly of such dispute, the agency shall
13 conduct a reasonable reinvestigation to determine whether the disputed information is
14 inaccurate, or delete the item from the file within 30 days of receiving the consumer's dispute
15 notice. 15 USC § 1681i(a)(1)(A). The Act further requires the CRA, within 5 business days
16 of receiving notice of the consumer's dispute, to provide notification of the dispute to the
17 person who furnished the information in dispute and requires the CRA to "include all relevant
18 information regarding the dispute that the agency received from the consumer." 15 USC §
19 1681i(a)(2)(A). In conducting its reinvestigation of disputed information in a consumer report,
20 the CRA is required to "review and consider all relevant information submitted by the
21 consumer."
22
23

24 26. Within the two years preceding the filing of this complaint, plaintiff has
25 notified each defendant herein of inaccuracies contained in that CRA's report on plaintiff and
26 has asked each defendant to reinvestigate and correct the inaccuracies.
27

1 27. Each of the CRA defendants has failed to conduct a proper reinvestigation of
2 the items of information that plaintiff has disputed.

3 28. On information and belief, each of the CRA defendants failed to provide
4 timely and complete notification to the furnisher of the disputed information.

5 29. On information and belief, each of the CRA defendants failed to review and
6 consider all relevant information submitted by plaintiff.

7
8 30. Each of the CRA defendants violated the provisions of 15 USC § 1681i in the
9 respects alleged above and in other ways presently unknown to plaintiff, who will provide
10 such information to defendants in discovery as it is uncovered. These violations by defendants
11 were negligent and willful.

12 31. As a result of the above described violations of § 1681i, plaintiff has been
13 damaged. Plaintiff continues to suffer actual damages and plaintiff will suffer more damages
14 in the future.

15
16 32. Plaintiff requests punitive damages pursuant to 15 USC § 1681n(a)(2) against
17 each of the CRA defendants.

18 33. Plaintiff requests costs of the action together with reasonable attorney fees as
19 determined by the court in accordance with 15 USC §§ 1681n(a) and 1681o(a).

20 **Third Claim: Capital One's Violations of 15 USC § 1681s-2(b)**

21
22 34. Plaintiff incorporates by reference paragraphs 1 through 10.

23 35. The FCRA requires a furnisher, after receiving notice from a CRA that a
24 consumer disputes information that is being reported by that furnisher, to conduct an
25 investigation with respect to the disputed information, to review all relevant information, to
26 report the results of the investigation to the CRA, and, if the investigation reveals that the
27

1 information is incomplete or inaccurate, to report those results to all other CRAs to which the
2 furnisher has provided the inaccurate information.

3 36. Within the last two years, Capital One has furnished inaccurate information
4 about plaintiff to the CRAs.

5 37. Within the past two years, plaintiff has notified the CRA defendants that she
6 disputes the inaccurate information reported by Capital One concerning her.

7 38. On information and belief, the CRAs have notified Capital One that plaintiff
8 has disputed the information it has furnished concerning plaintiff.

9 39. On information and belief, the CRAs has provided Capital One with the
10 relevant information plaintiff provided to the CRAs, as required of the CRAs by 15 USC §
11 1681i(a)(2).
12

13 40. Capital One negligently and willfully violated 15 USC § 1681s-2(b) by failing
14 to conduct an appropriate investigation, by failing to review all relevant information, by
15 failing to report the results to the CRAs, and by failing to modify, delete or permanently block
16 the reporting of the inaccurate information about plaintiff.
17

18 41. As a result of the above described violations of § 1681s-2(b), plaintiff has been
19 damaged. Plaintiff continues to suffer actual damages and plaintiff will suffer more damages
20 in the future.
21

22 42. Plaintiff requests punitive damages pursuant to 15 USC § 1681n(a)(2).

23 43. Plaintiff requests costs of the action together with reasonable attorney fees as
24 determined by the court in accordance with 15 USC §§ 1681n(a) and 1681o(a).

25 **PRAYER**

26 WHEREFORE, plaintiff prays for judgment against each defendant as follows:

27 1. Actual damages (for purposes of a default judgment, plaintiff demands

1 \$35,000 in actual damages);

2 2. Punitive damages (for purposes of a default judgment, plaintiff demands
3 \$100,000 against each defendant):

4 3. Costs of the action together with reasonable attorneys fees as determined by
5 the court.

6 Dated: September 25, 2007 KEMNITZER, ANDERSON, BARRON,
OGILVIE & BREWER LLP

7 By /s/ Andrew J. Ogilvie
8 Andrew J. Ogilvie
9 Attorney for Plaintiff Emelia M. Pasternak
10

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a trial by jury on all issues.

13 Dated: September 25, 2007 KEMNITZER, ANDERSON, BARRON,
14 OGILVIE & BREWER LLP

15
16 By /s/ Andrew J. Ogilvie
17 Andrew J. Ogilvie
18 Attorney for Plaintiff Emelia M. Pasternak
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